

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.304, 455D.6, and 455F.8A, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 123, “Regional Collection Centers and Mobile Unit Collection and Consolidation Centers,” and Chapter 211, “Financial Assistance for the Collection of Household Hazardous Materials and Hazardous Waste From Conditionally Exempt Small Quantity Generators,” Iowa Administrative Code.

The proposed amendments will differentiate between satellite facilities and regional collection centers (RCC). Satellite facilities collect and store household hazardous materials which are then picked up by an RCC. Satellite facilities will not be required to obtain a permit, but will instead need to meet requirements set out in proposed rule 567—123.3(455B,455D,455F) regarding building requirements, staff training, a plan of operations, and an emergency preparedness plan.

Requirements for RCCs will be streamlined by extending the length of the RCC permit from three to five years, removing the requirement for an education program from the permit, reducing the amount of financial assurance required for a new RCC that serves a population of less than 35,000 from \$15,000 to \$5,000, and clarifying that disposal funding assistance an RCC receives in a year cannot exceed the RCC’s total disposal costs for the year.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before 4:30 p.m. on December 8, 2009. Such written materials should be directed to Theresa Stiner, Land Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8895; or E-mail Theresa.Stiner@dnr.iowa.gov. Persons wishing to convey their views orally should contact Theresa Stiner at (515)281-8646.

When submitting comments, stakeholders are encouraged by the Department to utilize the following guidelines. These guidelines aid the Department in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business or organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language to improve the specific rule(s) and explain why.

A public hearing will be held on December 8, 2009, from 11 a.m. to 12 noon in the Fourth Floor West Conference Room of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of specific needs.

These amendments are intended to implement Iowa Code chapters 455B, 455D, and 455F.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Satellite facility” in rule **567—123.2(455B,455D,455F)**:

“*Satellite facility*” means a secured facility at which collection and storage of household hazardous materials and hazardous materials from CESQGs are accomplished prior to transportation of these wastes to an RCC. A satellite facility has a written contract with an RCC for the removal of collected waste. A satellite facility may be operated by a government agency or a private agency under contract with a government agency as part of a solid waste comprehensive plan. A satellite facility is available for public drop off of household hazardous materials either during regularly scheduled hours or by appointment.

ITEM 2. Renumber rules **567—123.3(455B,455D,455F)** to **567—123.12(455B,455D,455F)** as **567—123.4(455B,455D,455F)** to **567—123.13(455B,455D,455F)**.

ITEM 3. Adopt the following **new** rule **567—123.3(455B,455D,455F)**:

567—123.3(455B,455D,455F) Requirements for satellite facilities. Satellite facilities are exempt from obtaining a sanitary disposal project permit provided the facility complies with this rule.

123.3(1) The structures for satellite facilities shall meet the following criteria:

- a. All permanent structures shall meet the requirements of applicable building codes.
- b. The receiving area shall be constructed of an impervious, smooth material that is nonreactive with the waste.
- c. All sorting, bulking, transfer and storage areas shall be constructed of an impervious, smooth material so designed to be easily cleaned, be nonreactive with the waste, have secondary containment, and be protected from exposure to the weather.
- d. The satellite facility site shall be fenced to control access, and a gate shall be installed at the entrance to the site, which shall remain locked when personnel are not on duty.
- e. A sign shall be posted at the entrance gate indicating the name of the facility, emergency contact information, and days and hours of operation or a contact number for scheduling an appointment to drop off household hazardous materials.
- f. Operating hours shall be clearly posted at the entrance to either the receiving area or the storage area. It is also recommended that the operating hours be included in public awareness materials.

123.3(2) All satellite facility staff handling hazardous materials shall have received applicable training, including but not limited to the following:

- a. OSHA 24-hour health and safety training and annual 8-hour refresher training as described at 29 CFR 1910.120.
- b. Hazardous materials chemistry.
- c. Personnel and site safety.

123.3(3) A satellite facility shall prepare and maintain a plan of operations. The plan shall be kept on site and shall be available for review by the department upon request, and a copy shall be provided to the RCC servicing the satellite. The plan will include, at a minimum, the following:

- a. Standard receiving procedures for household and CESQG wastes.
- b. Procedures for managing unknown materials.
- c. Procedures for handling open or leaking containers.
- d. Procedures for handling large quantities of wastes.
- e. Recycling procedures for usable materials.
- f. Disposal of nonhazardous waste.
- g. Use of personal protection equipment (PPE).
- h. Initial training and continuing education requirements for staff.

123.3(4) A satellite facility shall prepare and maintain an emergency preparedness plan. The plan shall be readily usable as a reference manual by facility managers and operators under emergency conditions and shall be available for review by the department upon request. The plan shall include, at a minimum:

- a. Facility information.

- (1) A description of the facility.
- (2) The name and contact information of the responsible official.
- (3) Project location.
- b. Plans for responses to weather-related events.
 - (1) Tornadoes.
 - (2) Windstorms.
 - (3) Intense rainstorms.
 - (4) Lightning strikes.
 - (5) Flooding.
- c. Plans for responses to fires and explosions.
 - (1) Staff training.
 - (2) Fire occurrence procedures.
 - (3) Utilities, if applicable.
 - (4) Evacuation procedures.
- d. Emergency and release notification and reporting.
 - (1) Federal agencies.
 - (2) State agencies.
 - (3) County and city agencies.
 - (4) News media.
 - (5) Public and private facilities within five miles.
 - (6) Emergency response agencies and contact information.
 - (7) Reporting requirements and forms.
- e. Waste management procedures in the event of a temporary discontinuation of services other than planned seasonal closures.
 - (1) Details regarding the temporary closing of the site and the schedule for resuming services.
 - (2) An alternate disposal option if necessary.
 - (3) Details indicating how the public will be informed of the closing.
- f. Emergency aid.
 - (1) Responder contacts.
 - (2) Medical services.
- g. Employee orientation.
- h. Training completion and record keeping.
- i. Reference tables, figures and maps.
 - (1) Telephone list.
 - (2) Area map showing roads and evacuation routes and alternative access routes.
 - (3) Area map showing location of hospitals.
 - (4) Emergency checklist.

ITEM 4. Amend renumbered subrule 123.4(2) as follows:

123.4(2) *RCC and MUCCC permit exemption.* If an RCC or MUCCC is located at a permitted ~~recycling or composting facility or~~ sanitary disposal project, the RCC or MUCCC shall not be required to have its own permit; instead, the RCC or MUCCC activities may be amended into the host facility's permit.

ITEM 5. Amend renumbered subrule 123.4(9) as follows:

123.4(9) *Duration and renewal of permits.* A permit shall be issued and may be renewed for a period of ~~three~~ five years, unless otherwise authorized by the department. If the permit applicant is a private agency under contract with a local government, the permit shall not extend past the end date of the contract.

ITEM 6. Amend renumbered subrule 123.5(1) as follows:

123.5(1) An applicant for a regional collection center permit must submit the following information to the department:

- a. and b. No change.

- c. A map or aerial photograph locating the boundaries of the site and identifying:
 - (1) No change.
 - (2) Zoning and land use within ~~one-half mile~~ 750 feet.
 - (3) Homes and other buildings within ~~one-half mile~~ 750 feet.
 - (4) No change.
- d. to g. No change.
- h. Site plans detailing how the facility will comply with ~~rule 123.6(455B,455D,455F)~~ rule 567—123.7(455B,455D,455F).
- i. Schematic plans of facilities detailing how the facility will comply with ~~rule 123.7(455B,455D,455F)~~ rule 567—123.8(455B,455D,455F).
- j. No change.
- k. Documentation of staff qualifications pursuant to ~~rule 123.8(455B,455D,455F)~~ rule 567—123.9(455B,455D,455F).
- l. A plan of operations detailing how the facility will comply with ~~subrule 123.9(1)~~ subrule 123.10(1).
- ~~m. An education plan detailing how the facility will comply with subrule 123.9(2).~~
- ~~n. m.~~ Proof of the applicant's ownership of the RCC site or legal entitlement to use the site for the disposal of solid waste for the term of the permit for which application is made.
- ~~o. n.~~ A closure plan detailing how the facility will comply with ~~subrule 123.9(3)~~ subrule 123.10(2).
- ~~p. o.~~ An emergency response and remedial action plan (ERRAP) detailing how the facility will comply with ~~rule 123.10(455B,455D,455F)~~ rule 567—123.11(455B,455D,455F).

ITEM 7. Amend renumbered subrule 123.6(1) as follows:

123.6(1) An applicant for a mobile unit collection and consolidation center permit must submit the following information to the department:

- a. to g. No change.
- h. Site plans detailing how the facility will comply with ~~rule 123.6(455B,455D,455F)~~ rule 567—123.7(455B,455D,455F).
- i. Schematic plans of facilities detailing how the facility will comply with ~~rule 123.7(455B,455D,455F)~~ rule 567—123.8(455B,455D,455F).
- j. No change.
- k. Documentation of staff qualifications pursuant to ~~rule 123.8(455B,455D,455F)~~ rule 567—123.9(455B,455D,455F).
- l. A plan of operations detailing how the facility will comply with ~~subrule 123.9(1)~~ subrule 123.10(1).
- ~~m. An education plan detailing how the facility will comply with subrule 123.9(2).~~
- ~~n. m.~~ Proof of the applicant's ownership of the consolidation center for CESQG and HHM site or legal entitlement to use the site for the term of the permit for which application is made.
- ~~o. n.~~ Agreements from the owners of the sites where the mobile collections for CESQG and HHM will take place.
- ~~p. o.~~ A closure plan detailing how the facility will comply with ~~subrule 123.9(3)~~ subrule 123.10(2).
- ~~q. p.~~ An emergency response and remedial action plan (ERRAP) detailing how the facility will comply with ~~rule 123.10(455B,455D,455F)~~ rule 567—123.11(455B,455D,455F).

ITEM 8. Amend renumbered rule 567—123.9(455B,455D,455F) as follows:

567—123.9(455B,455D,455F) Staff qualifications. All RCC and MUCCC staff handling hazardous materials shall have received applicable training, including but not limited to the following:

- 1. OSHA 24-hour health and safety training and annual 8-hour refresher training as described by at 29 CFR 1910.120.
- 2. to 5. No change.
- 6. U.S. Department of Transportation ~~8-hour~~ hazardous materials training for the operation of a mobile unit for hazardous materials collection.

ITEM 9. Rescind renumbered subrule **123.10(2)**.

ITEM 10. Renumber renumbered subrule **123.10(3)** as **123.10(2)**.

ITEM 11. Amend renumbered rule **567—123.13(455B,455D,455F)**, introductory paragraph, as follows:

567—123.13(455B,455D,455F) Financial assurance requirements for regional collection centers and mobile unit collection and consolidation centers. Unless a facility is exempt from this rule pursuant to ~~subrule 123.12(4)~~ subrule 123.13(1), permitted RCCs and MUCCCs must obtain and submit a financial assurance instrument to the department for the storage of household hazardous materials in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of household hazardous wastes, universal wastes, hazardous waste from conditionally exempt small quantity generators, and any other solid wastes that may remain at a site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

ITEM 12. Amend renumbered subrule 123.13(3) as follows:

123.13(3) Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department ~~by July 1, 2008, or~~ at the time of application for a permit for a new RCC or MUCCC. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

ITEM 13. Amend renumbered subrule 123.13(5) as follows:

123.13(5) The estimate submitted to the department must account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to ~~subrule 123.9(3)~~ subrule 123.10(2):

a. The cost estimate submitted to the department shall be an average of the disposal costs charged by the hazardous waste contractor to the RCC or MUCCC as reported on the semiannual reports submitted in accordance with ~~rule 123.11(455B,455D,455F)~~ rule 567—123.12(455B,455D,455F) for the most recent three-year period.

b. For new facilities or existing facilities that do not have sufficient data to determine an average disposal cost, the initial cost estimate shall be equal to \$15,000 for facilities serving a population of 35,000 or greater and equal to \$5,000 for facilities serving a population of less than 35,000. ~~The estimate shall be adjusted once sufficient data is available for a three-year period.~~

ITEM 14. Amend renumbered subrule 123.13(6), introductory paragraph, as follows:

123.13(6) Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with ~~subrule 123.12(5)~~ subrule 123.13(5) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

ITEM 15. Amend renumbered subparagraph **123.13(6)“d”(3)** as follows:

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph ~~123.12(6)“a.”~~ 123.13(6)“a.” If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount

of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. ~~The state shall not be considered a party to this credit transaction.~~

ITEM 16. Amend renumbered subparagraph **123.13(6)“e”(1)** as follows:

(1) The terms of the written guarantee must provide that within 30 days of the owner’s or operator’s failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. No change.
2. Establish a fully funded secured trust fund as specified in paragraph ~~123.12(6)“a”~~ 123.13(6)“a” in the name of the owner or operator (payment guarantee); or
3. No change.

ITEM 17. Amend renumbered subparagraph **123.13(6)“e”(5)** as follows:

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility’s official files:

1. No change.
2. A letter signed by a certified public accountant and based upon a certified audit that:
 - Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by ~~subrule 123.12(5)~~ subrule 123.13(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
 - Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs ~~123.12(6)“e”~~ 123.13(6)“e”(2), (3) and (4).
3. No change.

ITEM 18. Amend renumbered subparagraph **123.13(6)“f”(1)** as follows:

(1) The terms of the written guarantee must provide that within 30 days of the owner’s or operator’s failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. No change.
2. Establish a fully funded secured trust fund as specified in paragraph ~~123.12(6)“a”~~ 123.13(6)“a” in the name of the owner or operator (payment guarantee); or
3. No change.

ITEM 19. Amend renumbered subparagraph **123.13(6)“f”(6)** as follows:

(6) The local government owner or operator must submit to the department the following items:

1. No change.
2. A copy of the guarantor’s most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph ~~123.12(6)“f”(2)“2,”~~ 123.13(6)“f”(2)“2,” if applicable, and the requirements of subparagraphs ~~123.12(6)“f”~~ 123.13(6)“f”(3) and (4).
3. A letter signed by the local government’s chief financial officer that lists all the current cost estimates covered by the guarantor, as described in ~~subrule 123.12(5)~~ subrule 123.13(5); and that provides evidence and certifies that the local government meets the conditions of subparagraphs ~~123.12(6)“f”~~ 123.13(6)“f”(2), (3), (4) and (5).

ITEM 20. Amend renumbered paragraph **123.13(7)“d”** as follows:

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, “proper closure” means completion of all items pursuant to ~~subrule 123.9(3)~~ subrule 123.10(2).

ITEM 21. Adopt the following **new** definition of “Satellite facility” in rule **567—211.2(455F)**:

“*Satellite facility*” means a secured facility at which collection and storage of household hazardous materials and hazardous materials from CESQGs are accomplished prior to transportation of these wastes

to an RCC. A satellite facility has a written contract with an RCC for the removal of collected waste. A satellite facility may be operated by a government agency or a private agency under contract with a government agency as part of a solid waste comprehensive plan. A satellite facility is available for public drop off of hazardous materials either during regularly scheduled hours or by appointment.

ITEM 22. Amend rule 567—211.5(455F) as follows:

567—211.5(455F) Eligible costs. An ~~RCC~~ applicant for an RCC establishment grant may request monetary assistance for the purpose of project development and implementation that includes funds for the following expense categories.

1. Materials and labor for construction, and the purchase cost of structures or mobile units, or both, to be used as an RCC or satellite facility, including but not limited to site excavation for the structure and modifications to control runoff.

2. A ~~three-year~~ one-year education program for households and CESQGs within the RCC service area. Eligible education expenses may include but are not limited to:

- Supplies, including paper and postage.
- The purchase of books, resource materials, slide shows, video materials, and other media for education of the local population or donation to local libraries or schools.

• Fees for public service announcements.

3. Equipment relating directly to the RCC or satellite operation.

4. and 5. No change.

~~6. Computers and software used for tracking hazardous materials.~~

ITEM 23. Amend rule 567—211.6(455F) as follows:

567—211.6(455F) Ineligible costs. ~~RCC applicants~~ Applicants for RCC establishment grants cannot request monetary assistance for the following costs:

1. to 8. No change.

ITEM 24. Amend subrule 211.7(1) as follows:

211.7(1) An applicant for an RCC establishment grant shall submit to the department a completed application and a comment form. The comment form shall be completed by the agency responsible for the submission of a solid waste comprehensive plan for the area in which the RCC or satellite facility will be established. ~~The comment form shall be submitted to the department within seven days of the application deadline or points may be deducted by the department during the application review process.~~

ITEM 25. Amend subrule 211.7(2) as follows:

211.7(2) The department shall coordinate the evaluation of proposals, and applicants will be awarded financial assistance based on selection criteria contained in the application form. Prior to receiving financial assistance from the department, applicants must either obtain a regional collection center permit, or amend the SDP permit of the host facility to include regional collection center activities, or provide documentation of a contractual arrangement with a permitted RCC for removal of the waste to be collected.

ITEM 26. Amend subrule 211.9(3) as follows:

211.9(3) The fall payments will be based on the report due September 1 and on available funding. An RCC or MUCCC will receive a percentage of the available funding in an amount proportional to the amount of HHM the RCC or MUCCC disposed of through a hazardous waste contractor, as reported on the hazardous materials collection semiannual report form, compared to the total amount of HHM disposed of by all RCCs and MUCCCs. The fall payment shall not exceed total disposal costs for the reporting period.

The spring payments will be based on the total pounds reported for the calendar year and on available funding. An RCC or MUCCC will receive a percentage of the available funding for the calendar year minus the amount received for the fall payment, in an amount proportional to the amount of HHM the RCC or MUCCC disposed of through a hazardous waste contractor, as reported on the hazardous

materials semiannual report form for the calendar year, compared to the total amount of HHM disposed of by all RCCs and MUCCCs. The spring ~~payment~~ and fall payments combined shall not exceed an RCC's or MUCCC's total disposal costs for the calendar year.